

**GROUND LEASE AGREEMENT**

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**CHARTER SCHOOL**

**BETWEEN**

**CITY OF NORTH MIAMI, as Landlord/Lessor**

**AND**

\_\_\_\_\_, as Lessee

(Contract No. \_\_\_\_\_)

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**SAMPLE GROUND LEASE  
AGREEMENT**

**THIS GROUND LEASE AGREEMENT** (hereinafter referred to as the “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125<sup>th</sup> Street, North Miami, Florida, as the Landlord/Lessor (hereinafter referred to as the “City”), and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the \_\_\_\_\_ State of Florida, having its principal office at \_\_\_\_\_ (hereinafter referred to as the “Lessee”). The City and Lessee shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

**WITNESSETH:**

**WHEREAS**, the City owns the real property described in **Exhibit TBD** (“Premises”, “Leased Premises” or “Property”), and desires to lease it to Lessee; and

**WHEREAS**, the Lessee has offered to finance, design, build, operate and manage a charter school on the Premises, in conformity with the City’s Request for Qualification **Charter School – RFQ No. 23-13-14**, and all associated addenda and attachments (hereinafter referred to as the “RFQ”); and

**WHEREAS**, the Lessee has submitted a written proposal in response to the RFQ dated **TBD** (hereinafter referred to as the “Lessee’s Proposal”); and

**WHEREAS**, the City’s Selection Team held a public meeting, reviewed and ranked all proposals and selected Licensee, as the most responsive and responsible provider of Lessee Services, whose qualifications and references demonstrated to be the most advantageous to the City; and

**WHEREAS**, on **TBD**, \_\_\_\_\_, in accordance with the findings and recommendations of the City’s selection team, the Mayor and City Council of the City of North Miami, Florida, approved the selection of Licensee, and authorized the City Manger to negotiate and execute this Agreement for the provision of Lessee Services; and

**WHEREAS**, the City desires to procure Lessee’s Services in consideration of Lessee’s use and enjoyment of the Premises, in accordance with the terms and conditions of the Contract Documents.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

1.1.1 *Agreement* - this written Agreement between the City and Lessee covering the Lessee's Services to be performed for the completion of the Project, including the Contract Documents that are attached to, or incorporated herein.

1.1.2 *City Council* - means the Mayor and Councilmembers of the City of North Miami.

1.1.3 *City's Project Manager* - a designated representative by the City Manager of the City fully acquainted with the Project with authority to render decisions necessary to expedite the completion of the Project. The Project Manager will provide direct interface with the Lessee with respect to the Lessee's responsibilities.

1.1.4 *Commencement Date* - shall mean the date when the City delivers possession of the Leased Premises to Lessee, but no later than TBD, and only after City's receipt of the first rent payment and Security Deposit, pursuant to Article TBD below.

1.1.5 *Contract Documents* - shall consist of this Agreement; the RFQ; Lessee's Proposal; Lessee's local vendor outreach proposal; preliminary and final Drawings, plans and specifications; Notice to Proceed; Certificates of Insurance; Payment and Performance Bonds; copies of current licenses; Project Manuals and Specifications; any additional documents which are required to be submitted under this Agreement; and all amendments, modifications and supplements, and Change Orders, issued on or after the effective date of this Agreement. Contract Documents are hereby incorporated into and made part of this Agreement. Nothing contained in the Contract Documents shall be construed to create a contractual relationship of any kind: 1) between the City and a Subcontractor or supplier, or 2) between any persons or entities other than the City and Lessee.

1.1.6 *Day* - shall mean a consecutive "calendar day," unless otherwise specifically designated otherwise.

1.1.7 *Drawings* - are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Project, generally including plans, elevations, sections, details, schedules and diagrams. Record drawings will be synonymous with "As Built" Drawings.

1.1.8 *Leased Premises* - shall mean the approximate \_\_\_\_ acres of property and existing facilities, located at: \_\_\_\_\_, North Miami, Florida, and as more particularly described in "Exhibit TBD", including the entire Project.

1.1.9 *Lessee's Services* - shall include all the efforts required to secure the professional financing, design, construction, management and operation of a charter school on the Subject Property, including all labor, materials, equipment and services provided or to be provided under this Agreement, in accordance with the terms, conditions and specifications contained in the Contract Documents.

1.1.10 *Notice to Proceed* - a written notice given by the City to the Construction Manager fixing the date on which the provision of Services shall commence on the Project and setting forth the date of Substantial Completion and Final Completion of the Project.

1.1.11 *Opening Date* - the date following Substantial Completion when the charter school is opened to receive attending students, as more particularly described under **Section TBD** below.

1.1.12 *Permitting Authority* - means the City of North Miami, Miami-Dade County Public Schools, and/or the State of Florida.

1.1.13 *Phase* - a clearly defined subset of work isolated for the purpose of expediting the entire Project to completion (e.g. financing phase, construction phase, and management phase). The total sum of all Phases is equal to the Scope of Work of the Project.

1.1.14 *Project* - the Project is the total sum of Lessee's Services to be performed under this Agreement for the construction and management of a charter school on the Subject Property. The Project consists of financing, planning, design, permitting, construction, code inspection and final inspections necessary to complete the charter school on the Subject Property and the operational management of the charter school. The Project is particularly depicted in **"Exhibit TBD"**.

1.1.15 *Subcontractor* - a person or entity retained by Lessee to provide labor, materials, equipment, services or supplies, necessary to complete the Project or a specific Phase or portion of the Project. Subcontractor shall include all sub-Subcontractors, retained directly or indirectly by Lessee.

1.1.16 *Subject Property or Leased Premises* - shall mean the City owned parcel of land (as more particularly depicted in **"Exhibit TBD"**) leased to Lessee and upon which the Project is to be financed, constructed, managed and operated for the term of this Agreement.

1.1.17 *Substantial Completion* - is the stage in the progress of Lessee's Services sufficiently complete in accordance with the Contract Documents so that Lessee can occupy and utilize the charter school for its intended use.

## **ARTICLE 2. ORDER OF PRECEDENCE**

2.1 If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) **the Scope of Services ("Exhibit TBD")**, 3) the City's RFQ, and 4) the Lessee's Proposal.

## **ARTICLE 3. RULES OF INTERPRETATION**

3.1 References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

3.2 Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

3.3 The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Agreement, nor affect the meaning thereof.

#### **ARTICLE 4. TERM OF AGREEMENT**

4.1 This Agreement shall become effective on TBD and shall be for the duration of TBD ( ) years. The City, at its sole discretion, reserves the right to exercise the option to renew this Agreement for a period of TBD ( ) additional years on a TBD basis. The City reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period and will notify the Lessee in writing of the extension. This Agreement may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the City and the Lessee.

#### **ARTICLE 5. EXPIRATION OF TERM**

5.1 At the expiration of this Agreement, or upon its termination, Lessee will peaceably yield up to the City the Leased Premises in good condition and repair, reasonable wear and tear excepted. Lessee shall remove from the Leased Premises all personal property of the Lessee and all fixtures, machinery, equipment, appurtenances and appliances placed or installed on the Leased Premises by it, and shall restore the Leased Premises to as good a state of repair as they were prior to the removal of such.

5.2 If for any reason or no reason Lessee remains in the Premises after the expiration of this Agreement, then City will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Lessee remains in the Premises after the expiration date, for any reason or no reason, then in addition to any other rights or remedies of City, Lessee shall pay to City, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Lessee holds over after the expiration date of this Agreement, a sum equal to 200% times the monthly rent payable under this Agreement, plus TBD of additional rent.

#### **ARTICLE 6. TIME FOR COMPLETION**

6.1 Licensee's Services shall commence immediately upon Notice to Proceed, as time is of the essence for completion.

6.2 The charter school is to be Substantially Complete within TBD weeks (TBD calendar days) when all materials and labor have been furnished to complete the charter school.

6.3 The charter school is to be placed in use within TBD weeks (TBD calendar days) from the date of Substantial Completion ("Opening Date").

6.4 Liquidated Damages. The City and Lessee recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the General



Conditions. Both Parties recognize the delays, expense and difficulties involved in proving in an arbitration proceeding, the actual loss suffered by the City is the Work is not completed on time. Accordingly instead of requiring any such proof, the City and Lessee agree that as liquidated damages for delay (but not as a penalty) Lessee shall pay the City TBD (\$ TBD) for each day that expires after the time specified above for Substantial Completion and TBD (\$ TBD) for each day that expires after the time specified in the Opening Date until such time the charter school is open to receive attending students.

#### **ARTICLE 7. ANNUAL RENT AND OTHER PAYMENTS TO THE CITY**

7.1 The Lessee agrees to compensate the City in the amount and manner stipulated in "Exhibit TBD".

7.2 On the Commencement Date, Lessee shall reimburse City for up to TBD (\$TBD) for documented and reasonable third party professional fees related to this Agreement transaction including administrative costs incurred by City.

#### **ARTICLE 8. METHOD AND TERMS OF PAYMENT**

8.1 Times of payment shall be as stipulated in "Exhibit TBD".

8.2 Should Lessee fail to pay the City any amount on each of the payment due dates, such failure shall constitute a default by the Lessee and City may send notice to Lessee of such default, pursuant to Article TBD below. In the event Lessee fails to cure the default within thirty (30) Days, the City, at its option, may immediately terminate this Agreement. Any extension of time for payment of rent beyond the thirty (30) Day grace period must be authorized by the City. The prevailing Party in any case regarding the collection of rent shall be entitled to court costs and attorneys' fees.

8.3 All rent shall be paid to the City at City's address.

8.4 No payment by Lessee or receipt by City of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by Lessee. Any endorsement or statement on any check or letter accompanying any check or payment of rent shall not be deemed an accord or satisfaction. City may accept any such check or payment without prejudice to Lessee's right to recover the balance of such rent or pursue any other remedy.

#### **ARTICLE 9. SECURITY DEPOSIT**

9.1 On or before the Commencement Date, the Lessee shall pay City TBD (\$ TBD), to be held by City as Security Deposit. This amount represents TBD. The Parties' rights to claims, disputes and return of the Security Deposit shall be governed by Florida law in effect as of the Commencement Date, and the terms of this Agreement. The Security Deposit shall not be used by Lessee for the payment of any rent, including without limitation, the last month's rent.

#### **ARTICLE 10. SCOPE OF LESSEE'S SERVICES**

10.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this

Agreement. The Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the Parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both Parties hereto or their authorized representatives.

10.2 The Lessee shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the City in all aspects of Lessee's Services performed hereunder.

10.3 The Lessee acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Agreement. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Lessee shall perform the same as though they were specifically mentioned, described and delineated.

10.4 The Lessee shall furnish all labor, materials, tools, supplies, and other items required to perform the work and services that are necessary for the completion of this Agreement. All work and services shall be accomplished at the direction of and to the satisfaction of the City's Project Manager.

10.5 The Lessee acknowledges that the City shall be responsible for making all policy decisions regarding the Scope of Services. The Lessee agrees to provide input on policy issues in the form of recommendations. The Lessee agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the City. The Lessee agrees to act in an expeditious and fiscally sound manner in providing the City with input regarding the time and cost to implement said changes and in executing the funding and activities required to implement said changes.

10.6 The Lessee warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Lessee at its own cost, whether or not specifically called for.

10.7 The Lessee warrants and accepts that any and all work, materials, services or equipment necessitated by the inspections of City and/or County agencies, or other regulatory agencies as are applicable, to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Lessee at no additional cost to the City.

10.8 The Lessee warrants and accepts that all other work of any kind, however characterized, not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the Lessee at no additional cost to the City.

10.9 The Lessee warrants and accepts that any and all repair work required during the construction phase, irrespective of the cause, shall be deemed the responsibility of the Lessee at no additional cost to the City.

10.10 Finally, the Lessee accepts, understands and agrees that these provisions of the Agreement constitute a material inducement for the City to enter into this Agreement and that the City has indeed relied on these particular provisions in making its decision to enter into this Agreement with Lessee.

10.11 It is understood and agreed by the Lessee that the North Miami Building Department and its inspectors are professionals who are dedicated to providing efficient and courteous service to all residents, professionals, contractors and the public at large through plans processing, inspections and building maintenance, which ensures the protection of the citizens and enhances the quality of life within the City. For the purposes of this Project, the Building Department is not a surrogate of the City. All decisions by the Building Department as to whether some aspect of the Project is or is not in compliance with the Florida Building Code, Florida Fire Prevention Code and/or any other applicable codes, regulations, laws and ordinances are independent of and not deemed to be an act or a decision by the City. The Lessee agrees that it shall be the responsibility of the Lessee to ensure compliance with all applicable codes, regulations, law and ordinances. As noted in **Article \_\_\_ TBD** of this Agreement the Lessee warrants and accepts that any and all work necessitated by inspections which is not prescribed in the Plans or Specifications, but necessitated to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents shall be deemed the responsibility of the Lessee at no additional cost to the City.

10.12 Community Benefits. The City believes in doing business with persons and business entities which adhere to corporate principles confirming a commitment for being good corporate citizens, and which value the goals and importance of community goodwill by providing tangible benefits back to the community in which they do business. As such, the City will seek those persons and business entities which are willing and cable of establishing a relationship with the City to identify, develop and furnish benefits back to the local community.

10.12.1 As an inducement for the City to enter into this Agreement, the Lessee will be requested to provide Community Benefits, as identified and approved by the City Manager. The approved Community Benefits submitted by the Lessee shall be incorporated into and shall become a part of this Agreement with the City. Such Community Benefits shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the City Code of Ordinances.

#### **ARTICLE 11. CITY WARRANTIES OF LEASED PREMISES**

11.1 City hereby warrants and represents to Lessee the following:

11.1.1 City is the owner in fee simple of the Leased Premises.

11.1.2 There are no known restrictions or limitations which would prevent City from abiding by the terms and conditions of this Agreement.

11.1.3 City covenants that if, and so long as Lessee is in compliance with the terms of this Agreement, Lessee shall peaceably and quietly have, hold, and enjoy the Leased Premises for the term of this Agreement.

11.1.4 There are no known legal impediments to City leasing the Leased Premises to Lessee pursuant to the terms and conditions herein. As of the effective date of this Agreement, there are no existing, or to City's knowledge, pending litigation before any court or administrative agency affecting the City's ability to lease the Premises to the Lessee, or to materially and adversely perform its obligations under this Agreement, except to the extent of a 2006 Amended and Restated Interlocal Agreement between Miami-Dade County School Board and the City which states, in pertinent part, the following under section 13:

The City covenants and agrees that, during the terms of the ground leases (as same may be extended), the City shall not seek, approve or accept any charter school within the City that would compete with NMHS, BLHS or the K to 8 educational center for so long as such facility is operated for school purposes. (See attached **Exhibit "TBD"**).

#### **ARTICLE 12. USE OF LEASED PREMISES/SUBJECT PROPERTY**

12.1 Lessee has inspected the Leased Premises and accepts the Leased Premises in its as-is condition as of the date of its execution of this Agreement.

12.2 The Lessee shall use the Leased Premises for the construction, operation, and management of a charter school. No other use of the Leased Premises shall be permitted unless the City, through its City Council approves, by a supermajority, in advance such use. In the event Lessee uses the Leased Premises other than as set forth in this paragraph **TBD**, without the City's advance approval, the City shall have the right to terminate this Agreement unless Lessee ceases such use within thirty (30) days of receipt of notice from the City.

12.3 The Lessee will not make or suffer any unlawful, improper or offensive use of the Lease Premises or any use or occupancy thereof, contrary to the laws of the State of Florida or to such City and/or County Codes in which the Leased Premises are located, now or hereinafter made, as may be applicable to Lessee.

12.4 The use and occupancy by the Lessee of the Leased Premises shall also include the development by Lessee of automobile parking areas, driveways, pathways, entranceways, means of ingress and egress, loading and unloading facilities, and other facilities as may be required in the proper function and administration of the charter school.

12.5 The Lessee shall have the right, at its expense, to renovate and construct improvements and alterations to the Leased Premises, subject to the City's advance review and written approval of the plans, which approval shall not be unreasonably withheld. The City will assist Lessee in obtaining any and all licenses, permits, approvals and authorizations required for the Lessee to complete the Projects; provided that such assistance shall not include the payment of any costs or

fees associated with the Project. Lessee will obtain and maintain any and all licenses, permits, approvals and authorizations as may be required to operate a charter school at the location of the Leased Premises.

12.6 City represents that it is unaware of any federal, state or local laws, rules regulations ordinances or codes, or deed restrictions that would prevent Lessee's use of the Leased Premises for the purpose of effectuating the Project.

### **ARTICLE 13. EASEMENTS AND ACCESS TO INFRASTRUCTURE**

13.1 Lessee acknowledges the presence of infrastructure into and out of the Leased Premises, as well as other utility infrastructure and operations in the area of the Leased Premises. City, for its benefit and for the benefit of other utility entities with infrastructure in the area of the Leased Premises, shall have a limited repair access easement in the event such is needed to repair or replace utility facilities on or adjacent to the Leased Premises. Repairs to the utility infrastructure may affect access to and from the Leased Premises. City agrees to coordinate and schedule any repairs or replacement work that may affect access to the Leased Premises with Lessee in advance of commencing such work except for emergency repairs and replacement.

### **ARTICLE 14. CONSTRUCTION PHASE**

14.1 Lessee covenants that the final precise plans submitted for the construction of the Project, shall be substantially similar to the conceptual plans submitted by Lessee in its response to the RFQ for the City's consideration.

14.2 Lessee shall use commercially reasonable efforts, to cause City to be named as an additional obligee (subordinate to any construction lender) on any payment or performance bond issued with respect to the construction of improvements. Prior to the issuance of a building permit, Lessee will obtain a surety bond (a) for any and all improvements which may be required within dedicated rights of way and/or public facility easements, and (b) for all public works pursuant to section 255.05, Fla. Stat. (2013), as same may be amended from time to time.

14.3 To the extent required by City Code, all buildings shall achieve LEED Certification Silver or greater or the equivalent under a similar nationally recognized green practice standard.

14.4 Notice is hereby given that City shall not be liable for any labor or materials furnished or to be furnished to Lessee or other party claiming under Lessee upon credit, and that no construction or other lien for any such labor or materials shall attach to or affect the fee estate. Nothing in this Agreement, including without limitation joinder by City in any application or approval, shall be deemed or construed in any way to constitute City's consent or request, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any construction, nor as giving Lessee or any other party claiming under Lessee any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the City's fee estate. Lessee shall indemnify City against any construction undertaken by Lessee or anyone claiming through Lessee, and against all prohibited liens.

14.5 Lessee agrees to obtain all the labor, materials, supervision, insurance, bonds, expertise, and services associated with the timely design and code compliant construction of the Project, including all the requisite approvals obtained from Permitting Authorities, as detailed in "Exhibit TBD".

#### **ARTICLE 15. ERRORS AND OMISSIONS**

15.1 The Lessee shall be responsible for technically deficient designs, reports, or studies due to its errors and omissions, and shall promptly correct or replace all such deficient work without cost to the City upon the request of the City, for five years after the date of acceptance of the Project by the City. Lessee shall also be responsible for the cost of correcting deficient construction which was built from technically deficient designs. Payment in full by the City for work performed does not constitute a waiver of this guarantee.

#### **ARTICLE 16. MAINTENANCE AND REPAIRS**

16.1 Lessee is responsible for maintenance and repair of all items, improvements, structures and equipment that are part of Lessee's Services, unless otherwise specifically designated as City's responsibility. Lessee covenants to keep the Leased Premises in good structural repair, including the roof, walls and foundations to be constructed.

16.2 Exterior maintenance, including without limitation, routine gardening, cutting, mulching, pruning and similar maintenance of all foliage; routine and non-routine maintenance of parking areas (including cleaning, painting, striping, paving, and repairs), common exterior areas, and swale areas shall be done by Lessee, at its expense.

16.3 The Lessee shall keep the interior of the charter school in accordance with generally accepted good practices, including painting, the replacement of worn or damaged floor covering and repairs or replacement of interior equipment as may be necessary due to normal usage.

16.4 Lessee shall be responsible for all interior and exterior pest control services, janitorial costs and services related to the charter school.

16.5 Lessee shall be responsible for the exterior appearance of the buildings on the Leased Premises, including without limitation paint, mold, mildew, and water stains. Lessee shall obtain City's written approval of the paint colors in advance. In the event of Lessee's failure to obtain City's paint color approval in advance, the City has the right to require changes to the paint and color at Lessee's expense.

16.6 If Lessee fails to timely make repairs or to maintain the Leased Premises as it is required under the terms of this Agreement, then the Lessee shall be liable for any damages to property or loss thereby sustained, and the City may have such repairs made at the expense of the Lessee. In such event, the Lessee shall pay additional rent at the next rental payment deadline, upon presentation of a certified invoice detailing the repairs made and the expenses incurred, and with verification of payment.

#### **ARTICLE 17. FIRE AND OTHER HAZARDS**

17.1 If any portion of the Leased Premises is damaged by fire, a Force Majeure Event, or other casualty caused in whole or in part by Lessee, its invitees, agents, employees, contractors,

Subcontractors, assigns or sub-lessees, then within thirty (30) Days following the occurrence thereof, Lessee shall furnish the City a written good faith estimate ("Restoration Notice") prepared by Lessee of the length of time required to substantially complete the restoration and repair of the portions of the Leased Premises for which Lessee is responsible for insuring and maintaining, to substantially the same condition as the Leased Premises enjoyed immediately prior to the casualty.

17.2 City shall not be required to rebuild or repair or replace any part of Leased Premises for which Lessee is responsible for insuring and maintaining, or the furniture, equipment, fixtures and other improvements which may have been placed by Lessee in the Leased Premises.

17.3 Should the Leased Premises be only partly destroyed, so that the major part thereof is usable by the Lessee, then the rent shall be abated to the extent that the injured or damaged part bears to the whole of such Leased Premises, until such injury or damage is, as quickly as practicable, restored by the Lessee. Then the full rent shall commence.

17.4 Lessee shall be responsible for maintenance and repair of all fire protection equipment necessary to conform to the requirements of the State of Florida Fire Marshal. The Parties agree that the Leased Premises shall be available for inspection by the State of Florida Fire Marshal, prior to occupancy by the Lessee, and at any reasonable time thereafter.

17.5 Lessee shall not generate, store, produce, place, treat, release, or discharge any contaminants, pollutants or pollution, including, but not limited to, hazardous or toxic substances, chemicals or other agents on, into, or from the Lessee Premises or any adjacent lands or waters in any manner not permitted by law.

17.6 For the purposes of this Agreement, "hazardous substances" shall mean and include those elements or compounds defined in 42 USC Section 9601 or which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") and the list of toxic pollutants designated by the United States Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, material, pollutant or contaminant.

17.7 *Pollutants* and *pollution* shall mean those products or substances defined in Chapters 376 and 403, Florida Statutes, and the rules promulgated there under, all as amended or updated from time to time. In the event Lessee's actions directly result in the Leased Premises and affected off-site waters and lands to not be in full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders and decrees, Lessee shall, to the extent permitted by law without waiving its sovereign immunity (if any), restore the damaged property to the condition existing immediately prior to the occurrence which caused the damage.

17.8 In the event the Leased Premises fail to be in full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders and decrees for any reason other than the actions of Lessee, City shall be solely responsible for restoring the Leased Premises to full compliance with all such federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders and decrees, at City's sole cost and expense. Upon discovery of a release of a hazardous substance or pollutant, or any other violation of local, state or federal law, ordinance, code, rule,

regulation, order, or decree relating to the generation, storage, production, placement, treatment, release or discharge of any contaminant, the Party making such discovery shall report such violation to all applicable governmental agencies having jurisdiction, and to the other Party, all within the reporting periods of the applicable agencies. Lessee's and City's obligations set forth in this paragraph shall survive the termination or expiration of this Lease.

#### **ARTICLE 18. UTILITIES**

18.1 Lessee shall be solely responsible for the payment of all utilities bills incurred in the construction, operation and management of the charter school and its related activities.

18.2 Lessee shall further ensure that the Leased Premises have the necessary utilities for the Lessee to conduct Lessee Services including, but not limited to, water and sewer, electricity, telephone and garbage collection. The Lessee shall be responsible for the cost of all utilities required to be installed.

#### **ARTICLE 19. SIGNAGE**

19.1 Lessee shall have the right to erect signage at its sole expense on the Leased Premises to appropriately identify the Lessee, and/or its use of the Leased Premises subject to the City's Land Development Regulations. City will assist Lessee with all permitting necessary for such signage, provided that such assistance does not include the payment of any costs or fees associated with the Lessee's Services.

#### **ARTICLE 20. JOINT USE OF LEASED PREMISES AND CITY'S OFF-PREMISES RECREATIONAL FACILITIES**

20.1 The Parties shall execute a Joint Use Agreement (attached hereto as "Exhibit TBD") for the periodic use by the Lessee of the City's adjacent properties including the Claude Pepper Park and the Joe Celestin Athletic Center and the use by the City of certain portions of the Leased Premises, including the gymnasium, ("City's Recreational Facilities") on mutually agreeable terms and conditions, which shall remain in effect during the term of this Agreement, and shall automatically expire upon termination or non-renewal of this Agreement. which Lessee may desire to use from time to time during the term of this Agreement. Upon execution hereto, the Parties acknowledge and accept the terms of the Joint Use Agreement attached hereto, and authorize execution of the Joint Use Agreement by appropriate representatives of each Party.

#### **ARTICLE 21. NOTICE REQUIREMENTS**

21.1 All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

For Lessee:

TBD  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_-\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_



For the City: City of North Miami  
Attn: City Manager  
776 N.E.125<sup>th</sup> Street  
North Miami, Florida 33161

With copy to: City of North Miami  
Attn: City Attorney  
776 N.E.125<sup>th</sup> Street  
North Miami, Florida 33161

21.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

21.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

## **ARTICLE 22. INDEMNIFICATION AND INSURANCE**

22.1 In accordance with Chapter 725, Florida Statutes, the Lessee shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, in an amount not less than **TBD** per occurrence which shall include attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Lessee or its employees, agents, servants, partners principals or Subcontractors. Furthermore, the Lessee shall pay all claims and losses in an amount not less than **TBD** per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Lessee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Lessee shall cover the City and its officers, employees, agents and instrumentalities and shall include claims, or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying Party and persons employed by or utilized by the indemnifying Party in the performance of the Agreement.

22.2 Upon City's notification, the Lessee shall furnish to the Department of Administrative Services, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

22.2.1 Worker's Compensation Insurance for all employees of the Lessee as required by Chapter 440, Florida Statutes. Should the Lessee be exempt from this statute, the Lessee and each employee shall hold the City harmless from any injury incurred during performance of the Agreement. The exempt contractor shall also submit a written statement detailing the number of employees and that they are not required to carry

Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this Agreement or a copy of a Certificate of Exemption.

22.2.2 General Liability Insurance on a comprehensive basis in an amount not less than **TBD** combined single limit per occurrence for bodily injury and property damage. The City must be shown as an additional insured with respect to this coverage.

22.2.3 Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than **TBD** per person and **TBD** per occurrence and property damage limits of **TBD**; or a comprehensive single limit of liability for bodily injury and property damage combined, with minimum limits of **TBD** per occurrence, covering all owned, non-owned, and hired vehicles used by the Lessee while performing operations in connection with this Agreement.

22.2.4 Lessee shall insure the building and improvements in an amount of **TBD** (\$ **TBD**).

22.3 The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Lessee. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

22.3.1 The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager.

22.4 Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Lessee hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the City.

22.5 Compliance with the foregoing requirements shall not relieve the Lessee of this liability and obligation under this section or under any other section in this Agreement.

22.6 Award of this Agreement is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after City notification to Lessee to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Lessee shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Lessee fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after City notification to comply, the Lessee shall be in default of the contractual terms and conditions and award of the Agreement will be rescinded, unless such time frame for submission has been extended by the City.

22.7 The Lessee shall be responsible for assuring that the insurance certificates required in conjunction with this Article remain in force for the duration of the contractual period of the Agreement, including any and all option years or extension periods that may be granted by the City. If insurance certificates are scheduled to expire during the contractual period, the Lessee shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the City shall suspend the Agreement until such time as the new or renewed certificates are received by the City in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at its sole discretion, terminate this Agreement.

22.8 Notwithstanding anything to the contrary in this Agreement, City shall retain all of its sovereign prerogatives and rights as a municipality under State law with respect to the Premises. It is expressly understood that:

22.8.1 City retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a municipal corporation under State law and shall in no way be estopped by virtue of its execution of this Agreement from withholding or refusing to issue any approvals in its municipal regulatory capacity of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of the Improvements, or the operation thereof, or be liable for the same; and

22.8.2 City shall not by virtue of this Agreement or any other agreement entered into by City relating to the Premises, be obligated in its municipal regulatory capacity to grant Lessee any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Buildings.

22.9 Notwithstanding and prevailing over any contrary provision in this Agreement, any covenant or obligation of City in its municipal regulatory capacity that may be contained in this Agreement shall not bind the City Council or any City of North Miami department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, or any other approvals that may be granted, withheld or revoked in the discretion of City in its municipal regulatory capacity or other applicable governmental agencies in the exercise of its police power.

22.10 Nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing a partnership or a joint venture between or among any of the Parties or as constituting any Party as the agent or representative of any other Party.

### **ARTICLE 23. MANNER OF PERFORMANCE**

23.1 Lessee Services shall be provided in a competent and professional manner satisfactory to the City in accordance with the terms and conditions of this Agreement. The City shall be

entitled to a satisfactory performance of all Lessee Services described herein and to full and prompt cooperation by the Lessee in all aspects of the Lessee Services. At the request of the City, the Lessee shall promptly remove from the Project any of Lessee's employees, Subcontractors, or any other person performing Lessee Services hereunder. The Lessee agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Lessee.

23.2 The Lessee agrees to defend, hold harmless and indemnify the City and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the City, occurring on account of, arising from or in connection with the removal and replacement of any Lessee's personnel performing services hereunder at the behest of the City. Removal and replacement of any Lessee's personnel as used in this Article shall not require the termination and or demotion of such Lessee's personnel.

23.3 The Lessee agrees that at all times it will employ, maintain and assign to the performance of the Lessee Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Project. The Lessee agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the City, should the City make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

23.4 The Lessee warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Lessee Services described herein, in a competent and professional manner.

23.5 The Lessee shall at all times cooperate with the City and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Lessee Services.

23.6 The Lessee shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 24. LESSEE EMPLOYEES**

24.1 All employees of the Lessee shall be considered to be, at all times, employees of the Lessee under its sole direction and control, and not employees or agents of the City. The City may require the Lessee to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on City property is not in the best interest of the City. Each employee shall have and wear proper identification.

#### **ARTICLE 25. INDEPENDENT CONTRACTOR RELATIONSHIP**

25.1 The Lessee is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the City. All

persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Lessee's sole direction, supervision and control. The Lessee shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Lessee's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City.

25.2 The Lessee does not have the power or authority to bind the City in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 26. AUTHORITY OF THE CITY'S PROJECT MANAGER**

26.1 The Lessee hereby acknowledges that the City's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Lessee Services; questions as to either Party's fulfillment of its obligations under the Agreement; negligence, fraud or misrepresentation before or subsequent to acceptance of Lessee's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

26.2 The Lessee shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Lessee agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

26.3 The Lessee must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Lessee and the Project Manager are unable to resolve their difference, the Lessee may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

26.4 In the event of such dispute, the Parties to this Agreement authorize the City Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the City Manager's purview as set forth above shall be conclusive, final and binding on Parties. Any such dispute shall be brought, if at all, before the City Manager within ten (10) days of the occurrence, event or act out of which the dispute arises.

26.5 The City Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Lessee's performance or any of its deliverables meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the City Manager participated therein, or by any

prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Lessee to the City Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the City Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The City Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Lessee. Except as such remedies may be limited or waived elsewhere in the Agreement, Lessee reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

#### **ARTICLE 27. MUTUAL OBLIGATIONS**

27.1 This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the Parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both Parties.

27.2 Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a Party or otherwise related (by virtue of ownership control or statutory control) to a Party.

27.3 In those situations where this Agreement imposes an indemnity obligation on the Lessee, the City may, at its expense, elect to participate in the defense if the City should so choose. Furthermore, the City may at its own expense, defend or settle any such claims if the Lessee fails to diligently defend such claims, and thereafter seek indemnity for costs from the Lessee.

#### **ARTICLE 28. QUALITY ASSURANCE/RECORD KEEPING**

28.1 The Lessee shall maintain, and shall require that its Subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Lessee and its Subcontractors and suppliers, shall retain such records, and all other documents relevant to the Lessee Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement, and any extension thereof.

#### **ARTICLE 29. AUDITS**

29.1 The City, or its duly authorized representatives or other governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Lessee's books, documents, papers and records and of its Subcontractors and suppliers which apply to all matters of Lessee's Services to the City. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

29.2 The Lessee agrees to grant access to the City's Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Lessee agrees to maintain an accounting system that provides accounting records that are

supported with adequate documentation, and adequate procedures for determining the allowability and applicability of costs.

### **ARTICLE 30. SUBSTITUTION OF PERSONNEL**

30.1 In the event the Lessee wishes to substitute personnel for the key personnel identified by the Lessee's Proposal, the Lessee must notify the City in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

### **ARTICLE 31. SUBCONTRACTOR RELATIONSHIPS**

31.1 If the Lessee will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Agreement will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Lessee; and the Lessee will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Lessee. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Lessee.

31.2 The Lessee, before making any subcontract for any portion of the Lessee Services, will state in writing to the City the name of the proposed Subcontractor, the portion of the Lessee Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the City may require. The City will have the right to require that the Lessee not award a subcontract to a person, firm or corporation disapproved by the City.

31.3 Before entering into any subcontract hereunder, the Lessee will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Lessee Services to be performed. Such Lessee Services performed by such Subcontractor will strictly comply with the requirements of this Agreement.

31.4 In order to qualify as a Subcontractor satisfactory to the City, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the City that it has the necessary facilities, skill and experience, and ample financial resources to perform the Lessee Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the City that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

31.5 The City shall have the right to withdraw its consent to a subcontract if it appears to the City that the subcontract will delay, prevent, or otherwise impair the performance of the Lessee's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the City's and City's proprietary and confidential information. Lessee shall furnish to the City copies of all subcontracts between Lessee and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the City permitting the City to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the City finds the Lessee in breach of its obligations, the option to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the City to any Subcontractor hereunder as more fully described herein.

**ARTICLE 32. ASSUMPTIONS, PARAMETERS,  
PROJECTIONS, ESTIMATES AND EXPLANATIONS**

32.1 The Lessee understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the City were provided to the Lessee for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the City makes no representations or guarantees; and the City shall not be responsible for the accuracy of the assumptions presented; and the City shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Lessee. The Lessee accepts all risk associated with using this information, in the financing, construction, operation and management of the Project.

**ARTICLE 33. TERMINATION FOR  
CONVENIENCE AND SUSPENSION OF CONSTRUCTION WORK**

33.1 The City may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the City through fraud, misrepresentation or material misstatement.

33.2 The City may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

33.3 The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from City contracting in accordance with the City debarment procedures. The Lessee may be subject to debarment for failure to perform and all other reasons set forth in Chapter 7, Article III of the City's Procurement Code.

33.4 In addition to cancellation or termination as otherwise provided in this Agreement, the City may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Lessee and in such event:

33.4.1 The Lessee shall, upon receipt of such notice, unless otherwise directed by the City:

- a) Stop work on the date specified in the notice ("the Effective Termination Date"); and
- b) Take such action as may be necessary for the protection and preservation of the City's property.

33.5 In the event that the City exercises its right to terminate this Agreement pursuant to this Article the Lessee will be compensated, if at all, as stated in "Exhibit TBD", for the:



33.5.1 Portion of the Lessee Services completed in accordance with the Agreement up to the Effective Termination Date; and

33.5.2 Non-cancelable deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Lessee Services.

33.6 Compensations paid, if any, pursuant to this Article is subject of verification by audit.

#### **ARTICLE 34. EVENT OF DEFAULT**

34.1 An Event of Default shall mean a breach of this Agreement by the Lessee. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

34.1.1 The Lessee has not delivered Lessee Services on a timely basis.

34.1.2 The Lessee has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled staff personnel.

34.1.3 The Lessee has failed to make prompt payment to, Subcontractors or suppliers for any portion of Lessee Services.

34.1.4 The Lessee has become insolvent, or has assigned the proceeds received for the benefit of the Lessee's creditors, or the Lessee has taken advantage of any insolvency statute or debtor/creditor law or if the Lessee's affairs have been put in the hands of a receiver.

a) The City reserves the right to terminate this Agreement, if, during the term of this Agreement the Lessee becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Lessee under federal bankruptcy law or any state insolvency law.

34.1.5 The Lessee has failed to obtain the approval of the City where required by this Agreement.

34.1.6 The Lessee has failed to provide "adequate assurances" as required under **section 34.2 below**.

34.1.7 The Lessee has failed in the representation of any warranties stated herein.

34.1.8 Monetary Default. The non-payment of any amount due to City which continues for thirty (30) days after notice from City, specifying which category of payments that have not been paid in full.

34.1.9 Prohibited Liens. If Lessee fails to comply with any obligation regarding liens and does not remedy such failure within 30 days after notice from City.

34.1.10 Failure to Complete Lessee's Construction Obligations. If Lessee fails to comply with Lessee's construction obligations and does not remedy such failure within ninety (90) days after notice from City.

34.1.11 Breach of Transfer Provisions. If any assignment or change of use is made without the City's express consent.

34.1.12 Lessee's failure to timely pay real estate taxes.

34.1.13 Lessee's failure to timely pay utility charges.

34.1.14 Lessee's failure to timely provide copies of plans and specifications.

34.1.15 Lessee's failure to maintain the Leased Premises.

34.1.16 Lessee's failure to provide City access to inspect.

34.1.17 Lessee's failure to comply with certain local preference requirements, community benefits requirements or enrollment preference, pursuant to Section 1002.33(10), Florida Statutes (2013).

34.2 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Lessee's ability to perform the Lessee Services or any portion thereof, the City may request that the Lessee, within the time frame set forth in the City's request, provide adequate assurances to the City, in writing, of the Lessee's ability to perform in accordance with terms of this Agreement. Until the City receives such assurances the City may request an adjustment to the compensation received by the Lessee for portions of the Lessee Services which the Lessee has not performed. In the event that the Lessee fails to provide to the City the requested assurances within the prescribed time frame, the City may:

34.2.1 Treat such failure as a repudiation of this Agreement.

34.2.2 Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Lessee Services or any part thereof either by itself or through others.

34.3 In the event the City shall terminate this Agreement for default, the City or its designated representatives, may immediately take possession of its real property, in addition to Lessee's personal property, including all equipment, materials, products, documentation, reports and data.

**ARTICLE 35. NOTICE OF DEFAULT –  
OPPORTUNITY TO CURE /TERMINATION**

35.4 If an Event of Default occurs, in the determination of the City, the City may so notify the Lessee ("Default Notice"), specifying the basis for such default, and advising the Lessee that such default must be cured immediately or this Agreement with the City may be terminated. Notwithstanding, the City may, in its sole discretion, allow the Lessee to rectify the default to the City's reasonable satisfaction within a thirty (30) day period. The City may grant an additional period of such duration as the City shall deem appropriate without waiver of any of the City's rights hereunder, so long as the Lessee has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the City prescribes. The default notice shall specify the date the Lessee shall discontinue the Lessee Services upon the Termination Date.

**ARTICLE 36. REMEDIES IN THE EVENT OF DEFAULT**

36.1 If an Event of Default occurs, the Lessee shall be liable for all damages resulting from the default, including but not limited to:

36.1.1 Lost revenues;

36.1.2 The difference between the cost associated with procuring Lessee Services hereunder and the amount actually expended by the City for re-procurement of Lessee Services, including procurement and administrative costs; and

36.1.3 All damages City incurs by reason of Lessee's Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by City and reimbursement of City's reasonable out of pocket costs, including legal costs and bank fees for dishonored checks.

36.1.4 Notwithstanding any law to the contrary, City need not commence separate actions to enforce Lessee's obligations for each amount of rent not paid, but may accelerate all amounts due under the Agreement and may bring and prosecute a single combined action for all such rents and damages.

36.2 The Lessee shall also remain liable for any liabilities and claims related to the Lessee's default. The City may also bring any suit or proceeding for specific performance or for an injunction.

36.3 City may terminate Lessee's right to possess the Premises by any lawful means, in which case this Agreement shall terminate, such date of termination shall be the Expiration Date, and Lessee shall immediately surrender possession of Premises to City.

36.4 City may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Lessee, with or without having terminated this Agreement, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by City. Except as expressly provided in this Agreement or prohibited by law, Lessee, for and on behalf of itself and all persons claiming by, through or

under Lessee, expressly waives any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Agreement if Lessee is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by City or any expiration or termination of this Agreement. No re-entry by City, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Lessee from liability under this Agreement. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Agreement, are not restricted to their technical legal meanings.

36.5 City may sue for damages or to recover rent from time to time at City's election.

36.6 No receipt of money by City from Lessee after termination of this Agreement, or after the giving of any notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any notice theretofore given to Lessee, or waive City's right to enforce payment of any rent payable or later falling due, or City's right to recover possession by proper remedy, except as this Agreement expressly states otherwise, it being agreed that after service of notice to terminate this Agreement or the commencement of suit or summary proceedings, or after final order or judgment for possession, City may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at City's election, on account of Lessee's liability.

36.7 City may change the locks and other security devices providing admittance to the Premises as permitted by law.

#### **ARTICLE 37. PATENT AND COPYRIGHT INDEMNIFICATION**

37.1 The Lessee warrants that all deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

37.2 The Lessee shall be liable and responsible for any and all claims made against the City for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the City's continued use of the deliverables furnished hereunder. Accordingly, the Lessee at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the City and defend any action brought against the City with respect to any claim, demand, cause of action, debt, or liability.

37.3 In the event any deliverable or anything provided to the City hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Lessee shall have the obligation to, at the City's option to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the City, at the Lessee's expense, the rights provided under this Agreement to use the item(s).

37.4 The Lessee shall be solely responsible for determining and informing the City whether a prospective supplier or Subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any deliverable hereunder. The Lessee shall enter into agreements with all suppliers and Subcontractors at the Lessee's own risk. The City may reject any deliverable that it believes to be the subject of any such litigation or injunction, or if, in the City's judgment, use thereof would delay the Work or be unlawful.

37.5 The Lessee shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of Lessee Services.

#### **ARTICLE 38 - PUBLIC RECORDS**

38.1 As a political subdivision of the State of Florida, the City is subject to the stipulations of Florida's Public Records Law. Therefore, Lessee understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

38.2 The Lessee shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service ; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law ; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

38.3 The Lessee will report to the City any information discovered or which is disclosed to the Lessee which may relate to the improper use, publication, disclosure or removal from the City's property of any information technology software and hardware, and will take such steps as are within the Lessee's authority to prevent improper use, disclosure or removal.

#### **ARTICLE 39. PROPRIETARY RIGHTS**

39.1 The Lessee hereby acknowledges and agrees that the City retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the City to the Lessee hereunder or furnished by the Lessee to the City and/or created by the Lessee for delivery to the City, even if unfinished or in process, as a result of the Lessee Services the Lessee performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Lessee as well as its employees, agents, Subcontractors and suppliers may use only in connection of the performance of Lessee Services under this Agreement. The Lessee shall not, without the prior written consent of the City, use such documentation on any other project in which the Lessee or its employees, agents, Subcontractors or suppliers are or may become engaged. Submission or distribution by the Lessee to meet official regulatory

requirements or for other purposes in connection with the performance of Lessee Services under this Agreement shall not be construed as publication in derogation of the City's copyrights or other proprietary rights.

39.2 All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Lessee and its Subcontractors specifically for the City, hereinafter referred to as "Developed Works" shall become the property of the City.

39.3 Accordingly, neither the Lessee nor its employees, agents, Subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Lessee, or any employee, agent, Subcontractor or supplier thereof, without the prior written consent of the City, except as required for the Lessee's performance hereunder.

39.4 Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Lessee and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Lessee hereby grants, and shall require that its Subcontractors and suppliers grant, if the City so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. Such license specifically includes, but is not limited to, the right of the City to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the City for such person's or entity's use in furnishing any and/or all of the deliverables provided hereunder exclusively for the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

#### **ARTICLE 40. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

40.1 Lessee agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County and City orders, statutes, ordinances, rules and regulations which may pertain to the Lessee Services required under this Agreement, including but not limited to:

40.1.1 Equal Employment Opportunity (EEO), in compliance with Executive Order No. 11246, as amended and as applicable to this Agreement.

40.1.2 Environmental Protection Agency (EPA), as applicable to this Agreement.

40.1.3 Section 7-151, City Code of Ordinances, “Local Preference Code”. Lessee covenants to include both, City businesses and City residents in the construction of the Project, so that at least **Twenty Five percent (25%)** of the total construction cost is subcontracted to City businesses; and at least **Twenty Five percent (25%)** of workers on the Project are City residents, in accordance with Lessee’s Proposal.

40.1.4 Jessica Lunsford Act. In accordance with the requirements of Sections 435.04 and 435.05, Florida Statutes (2013) as well as with the requirements of HB 1877, The Jessica Lunsford Act (2005), effective September 1, 2005, as amended, and to the extent required by applicable law, the Lessee agrees that all of its employees who provide or may provide program services under this Agreement have completed all background screening requirements as outlined in the above-referenced statutes. The Lessee agrees to bear any and all costs associated with acquiring the required background screenings. The Licensee agrees that it has an ongoing duty to maintain and update this list as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. The Licensee further agrees to notify the City immediately upon becoming aware that one of its employees, who was previously certified as completing the background check and meeting the statutory standards, is subsequently arrested or convicted of any disqualifying offense.

#### **ARTICLE 41. NONDISCRIMINATION**

41.1 During the performance of this Agreement, Lessee agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

41.2 By entering into this Agreement with the City, the Lessee attests that it shall not be in violation of the Americans with Disabilities Act of 1990 (and related Acts), as amended. If the Lessee or any owner, subsidiary or other firm affiliated with or related to the Lessee is found by the responsible enforcement agency or the City to be in violation of the Act, such violation shall render this Agreement void.

#### **ARTICLE 42. CONFLICTS OF INTEREST**

42.1 The Lessee represents that:

42.1.1 No officer, director, employee, agent, or other consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

42.1.2 There are no undisclosed persons or entities interested with the Lessee in this Agreement. This Agreement is entered into by the Lessee without any connection with any other entity or person making a proposal for the same purpose, and without collusion,

fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the City, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

a) Is interested on behalf of or through the Lessee directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

b) Is an employee, agent, advisor, or consultant to the Lessee or to the best of the Lessee's knowledge any Subcontractor or supplier to the Lessee.

42.2 Neither the Lessee nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Lessee shall have an interest which is in conflict with the Lessee's faithful performance of its obligation under this Agreement; provided that the City, in its sole discretion, may consent in writing to such a relationship, provided the Lessee provides the City with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the City's best interest to consent to such relationship.

42.3 The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

42.4 In the event Lessee has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Lessee shall promptly bring such information to the attention of the City's Project Manager. Lessee shall thereafter cooperate with the City's review and investigation of such information, and comply with the instructions Lessee receives from the Project Manager in regard to remedying the situation.

42.5 Section 2-11.1(d) of Miami-Dade County ("County") Code, as amended, requires any City employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with the City or any person or agency acting for the City from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with the City or any person or agency acting for the City and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable.



**ARTICLE 43. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

43.1 Under no circumstances shall the Lessee without the express written consent of the City:

43.1.1 Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the City, or the work being performed hereunder, unless the Lessee first obtains the written approval of the City. Such approval may be withheld if for any reason the City believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

43.1.2 Communicate in any way with any contractor, department, board, agency, council or other organization or any person whether governmental or private in connection with the Lessee Services to be performed hereunder except upon prior written approval and instruction of the City; and

43.1.3 Except as may be required by law, the Lessee and its employees, agents, Subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Lessee or such parties has been approved or endorsed by the City.

**ARTICLE 44. GOVERNING LAW**

44.2 This Agreement, including appendices, and all matters relating to this Agreement (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

**ARTICLE 45. HEALTH INFORMATION**

45.1 Any person or entity that performs or assists the City with a function or activity involving the use or disclosure of "Individually Identifiable Health Information ("IIHI") and/or Protected Health Information ("PHI") shall comply with the Health Insurance Portability and Accountability Act ("HIPAA") of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfers include, but are not limited to:

45.1.1 Use of information only for performing Lessee Services required by this Agreement or as required by law;

45.1.2 Use of appropriate safeguards to prevent non-permitted disclosures;

45.1.3 Reporting to Miami-Dade County of any non-permitted use or disclosure;

45.1.4 Assurances that any agents and Subcontractors agree to the same restrictions and conditions that apply to the Lessee and reasonable assurances that IIHI/PHI will be held confidential;

45.1.5 Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;

45.1.6 Making PHI available to the City for an accounting of disclosures; and

45.1.7 Making internal practices, books and records related to PHI available to the City for compliance audits.

45.2 PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Lessee must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with the PHI.

#### **ARTICLE 46. SURVIVAL OF TERMS**

46.1 The Parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Lessee and the City under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

#### **ARTICLE 47 - FORCE MAJEURE**

47.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

47.2 Lessee further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within 96 hours after such an occurrence.

#### **ARTICLE 48 – ASSIGNMENT AND SUBLETTING**

48.1 This Agreement shall not be assigned in whole or in part without the prior written consent of the City. Should such assignment involve a Release of any of the Lessee's obligations under this Lease, the City shall have the right to analyze the assignee's proposed use and ability to satisfy the obligations, including without limitation rental payments and maintenance obligations, of this Agreement, and may reject the assignment if not satisfied with the results of such review. Any assignment made either in whole or in part without the prior written consent of the City shall be void and without legal effect.

**ARTICLE 49 – TAXES**

49.1 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

49.2 In addition to the rent payable pursuant to **Article \_\_TBD\_\_**, Lessee shall assume full responsibility for and shall pay all taxes and assessments that accrue to the Leased Premises or to the improvements thereon, including sales and property taxes, any and all drainage and special assessments, and all mechanic's or materialman's liens which may be hereafter lawfully assessed and levied against the Leased Premises.

**ARTICLE 50 – PROHIBITION OF LIENS AND ENCUMBRANCES**

50.1 Lessee shall not cause any lien or encumbrance of any nature including, but not limited to, mortgages or construction liens, to be filed against the real property contained in the Leased Premises.

**ARTICLE 51 – RADON GAS**

51.1 As required by Florida Statutes Section 404.056(8), City notifies Lessee as follows:

“RADON GAS: Radon is a naturally occurring radioactive gas that, once it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Additional information regarding Radon and Radon testing may be obtained from your County Health Unit.”

**ARTICLE 52 – SCHOOL CROSSING GUARDS  
AND SCHOOL RESOURCE OFFICERS**

52.1 It is understood by Lessee that School Crossing Guards may be required for the Leased Premises, and they may be used by students from several schools in the area of the Leased Premises. Lessee shall be responsible for its proportionate share of the costs of School Crossing Guards, and agrees to pay for such. Failure to pay the invoice may be considered a breach of this Agreement.

52.2 In the event School Resource Officers (SRO) are required for the operation and use of the Leased Premises, Lessee shall enter into a separate agreement with the City for the SROs.

**ARTICLE 53 – OPERATIONS OF CHARTER SCHOOL**

53.1 Lessee agrees to provide a high quality, rigorous career oriented curriculum that will prepare students for successful progression into post-secondary education and productive employment within a multilingual, multi-literate and multi-cultural environment. The school shall be committed to setting an environment that strives for academic achievement, develops character and maintains the goal of preparing students to serve and give back to their community in the field of public service. To this end, the City expects Lessee to provide and focus on the following curriculum subject areas:

- 53.1.1 Criminal Justice
- 53.1.2 Legal and Public Affairs
- 53.1.3 Forensic Science Academy
- 53.1.4 911 Operations

- 53.1.5 First Responder / Firefighting Academy
- 53.1.6 Business and Technology Academy
- 53.1.7 JROTC Program
- 53.1.8 Public Administration
- 53.1.9 College Preparatory
- 53.1.10 Public Relations
- 53.1.11 Mass Communications
- 53.1.12 Journalism
- 53.1.13 Physical Therapy
- 53.1.14 Sports Management

53.2 In addition to the expected curriculum enunciated in Section 53.1 above, Lessee agrees to provide preferential student enrollment to at risk students and to the following student population, pursuant to Sections 1002.33(10)(d) and (15)(b), Florida Statutes (2013):

53.1.1 Students who are siblings of a student enrolled in the charter school.

53.1.3 Students who are the children of an employee of the charter school.

53.1.4 Students who are the children of:

- a) A resident of the municipality in which such charter school is located.

53.3 Lessee further covenants to use best efforts to employ from the ranks of the local community into the charter school, staff and other school professionals which mirror the demographics of our diverse City.

#### **ARTICLE 54- MISCELLANEOUS PROVISIONS**

54.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

54.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

54.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

54.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

54.5 City reserves the right to audit the records of the Lessee covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

54.6 The professional Services to be provided by Lessee pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

54.7 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

54.8 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

54.9 The Lessee, if a Foreign Corporation, may be required to obtain a Certificate of Authority from the Florida Department of State, in accordance with Section 607.1501, Florida Statutes.

54.10 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

*[The remainder of this page is intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST: \_\_\_\_\_, a  
\_\_\_\_\_  
Corporate Secretary or Witness: **“Lessee”**:

By: \_\_\_\_\_ By: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

ATTEST: City of North Miami, a Florida municipal  
Corporation:  
**“City”**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Michael A. Etienne Stephen E. Johnson  
City Clerk City Manager

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Regine M. Monestime  
City Attorney